

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS D. BRIEL,

Plaintiff,

-against-

MEMORANDUM & ORDER
12-CV-2868 (JS) (GRB)

CORPORAL FIELDS and CORRECTIONS
OFFICER KRIEN,

Defendants.

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APPEARANCES

For Plaintiff: Thomas D. Briel, pro se
830 Hayes Street
Baldwin Harbor, New York 11510

For Defendants: Pablo A. Fernandez, Esq.
Sara Kaye Schwartz, Esq.
Nassau County Attorney's Office
One West Street
Mineola, New York 11501

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge Gary R. Brown's Report and Recommendation ("R&R"), recommending that this Court dismiss this action with prejudice pursuant to Federal Rule of Civil Procedure 41. (Docket Entry 46.) At the same time, Plaintiff filed a motion for leave to proceed in forma pauperis. (See Motion, Docket Entry 2.) For the following reasons, the Court ADOPTS Judge Brown's R&R in its entirety.

BACKGROUND

This action was commenced on June 6, 2012 by plaintiff Thomas Briel ("Plaintiff") against Nassau County Correctional

Facility, Armor Correctional Health, Inc., and the Nassau County Sheriff's Department. (Compl., Docket Entry 1.) Plaintiff subsequently filed an Amended Complaint dated August 8, 2012 that named additional defendants including defendants Corporal Fields and Corrections Officer Krien (collectively, "Defendants").¹ (Am. Compl., Docket Entry 15.) In its Order dated August 21, 2012, the Court granted Plaintiff's application to proceed in forma pauperis and sua sponte dismissed the Amended Complaint against all defendants except Corporal Fields and Corrections Officer Krien. (August 2012 Order, Docket Entry 16, at 2-3.) Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 and alleges that while he was incarcerated at the Nassau County Correctional Facility, Defendants took away his medication, failed to appropriately address his pain management and were deliberately indifferent to his medical needs by "knowingly refusing to place [Plaintiff] on a bottom bunk when [he] moved into the program housing unit." (Aug. 2012 Order at 3-4.)

On March 2, 2015, Defendants moved to dismiss this action for lack of prosecution. (Docket Entry 44.) On October 6, 2015,

¹ Prior to filing his Amended Complaint dated August 8, 2012, Plaintiff had filed two other Amended Complaints. (See Docket Entries 7 and 8.) The Court's Order dated July 2, 2012 directed Plaintiff to "file a single document entitled 'Amended Complaint' and include all of the defendants he seeks to sue as well as the claims he seeks to assert against each such defendant." (July 2, 2012 Order, Docket Entry 9.)

the undersigned referred Defendants' motion to Judge Brown for an R&R on whether the motion should be granted. (Docket Entry 45.)

On November 10, 2015, Judge Brown issued his R&R. (See, R&R.) The R&R recommends that the Court dismiss this action, with prejudice, pursuant to Federal Rule of Civil Procedure 41(b). (R&R at 9.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Brown's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Brown's R&R (Docket Entry 46) is ADOPTED in its entirety. Defendants are directed to serve a copy of this

Memorandum & Order on Plaintiff and file proof of service. The Clerk of the Court is further directed to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: January 26, 2016
Central Islip, New York